

BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re First National Collection Bureau, Inc.
Class Action Litigation

MDL No. _____

**MOTION OF DEFENDANT FIRST NATIONAL COLLECTION BUREAU, INC. FOR
TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED
PRETRIAL PROCEEDINGS**

FIRST NATIONAL COLLECTION BUREAU, INC. (“FNCB”), the sole defendant in each of the three identical putative class actions at issue, respectfully moves this court for an order pursuant to 28 U.S.C. § 1407, transferring to the Honorable Janis L. Sammartino, United States District Judge for the Southern District of California, for pre-trial consolidation the three class actions listed in the accompanying Schedule of Actions that allege FNCB’s collection practices constitute a violation of the Telephone Communications Protection Act (“TCPA”).

1. Consolidation of the three class actions in the Southern District of California is warranted because all the actions involve claims against FNCB with common – in fact, virtually identical - questions of fact and law regarding FNCB’s purported TCPA violations. Each action alleges that FNCB violated the TCPA through its purported use of an automatic telephone dialing system and an artificial or prerecorded voice to place unsolicited debt collection calls to the cellular phones of the named plaintiffs and the class members without their consent.

2. The purported classes coincide in both scope and time.

3. The overlap in the three cases will invariably generate duplicative motion practice, discovery requests and disputes. Consolidation of the three cases will eliminate such

duplication, along with the avoidance of potentially inconsistent rulings. Plus, the resources of the courts and the litigants will be conserved.

4. The Southern District of California where the *Hunter* case is already venued, is the most appropriate forum to preside over the consolidated class actions because it is the natural mid-point location of the transferee districts and easily accessible by the parties and counsel. It also has the resources and judicial expertise to handle the three related class actions.

Respectfully submitted,

GORDON & REES LLP

DATED: February 3, 2014

/s/
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BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re First National Collection Bureau, Inc.
Class Action Litigation

MDL No. _____

**MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF DEFENDANT
FIRST NATIONAL COLLECTION BUREAU, INC.’S MOTION FOR TRANSFER AND
CONSOLIDATION OF RELATED ACTIONS PURSUANT TO 28 U.S.C. § 1407**

FIRST NATIONAL COLLECTION BUREAU, INC. (“FNCB”), the sole defendant in each of the three class action cases, respectfully submits this brief in support of its motion, pursuant to 28 U.S.C. §1407, for an order transferring to the Honorable Janis L. Sammartino, United States District Judge for the Southern District of California,¹ for pre-trial consolidation the three identical putative class actions (listed in the accompanying Schedule of Actions) that allege FNCB’s collection practices constitute a violation of the Telephone Communications Protection Act² (“TCPA”).

I. Introduction and Summary of Position

Consolidation of the three class actions in the Southern District of California is warranted because all the actions involve claims against FNCB with common – in fact, virtually identical - questions of fact and law regarding FNCB’s purported TCPA violations. Each action alleges that FNCB violated the TCPA through its purported use of an automatic telephone dialing system and an artificial or prerecorded voice to place unsolicited debt collection calls to the cellular phones of the named plaintiffs and the class members without their consent. And the purported classes

¹ Judge Sammartino currently presides over one of the cases subject of this Motion, *Nanette Hunter v. First National Collection Bureau, Inc.*, United States District Court Case No. 13-cv-01515-JSL-KSC (the “Hunter case”).

² 47 U.S.C. § 227 *et seq.*

coincide in both scope and time. The overlap in the three cases will invariably generate duplicative motion practice, discovery requests and disputes. Consolidation of the three cases will eliminate such duplication, along with the avoidance of potentially inconsistent rulings. Plus, the resources of the courts and the litigants will surely be conserved.

The Southern District of California where the *Hunter* case is already venued, is the most appropriate forum to preside over the consolidated class actions because it is the natural mid-point location of the transferee districts and easily accessible by the parties and counsel. It also has the resources and judicial expertise to handle the three related class actions.

II. Pertinent Factual Background

The factual predicate for each case is essentially the same: Plaintiffs each allege that FNCB, which is in the business of collecting debts on behalf of various third parties, violated the TCPA by its purported use of an automatic telephone dialing system (“ATDS”) and an artificial or prerecorded voice to place unsolicited debt collection calls to the cellular cell phones of the named plaintiffs and the putative class members without their consent. A summary of each action’s allegations follows.

On June 17, 2013, Plaintiff Claudette Neal (“Neal”) filed in the Eastern District of California a Class Action Complaint in the action entitled *Claudette Neal v. First National Collection Bureau, Inc.*, Case No. 13-cv-01206-WBS-CKD (the “Neal action”). In her Complaint, Ms. Neal alleges that FNCB violated the TCPA through its purported use of an automatic telephone dialing system (“ATDS”) and an artificial or prerecorded voice to place unsolicited debt collection calls to the cellular phones of Neal and the class members without their consent. The *Neal* Action purports to be brought on behalf of the following defined class:

All persons within the United States who received any telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint.

The purported Class period dates back four (4) years from the date the action was filed to June 17, 2009.

Just days later, on June 28, 2013, the *Hunter* action was commenced. As demonstrated by the Class Action Complaint filed by Ms. Hunter, she set forth nearly identical allegations about FNCB's purported violation of the TCPA, and includes the following similarly class definition:

All persons within the United States who received any telephone calls from Defendant or their agents to said person's cellular telephone through the use of any automatic telephone dialing system or with an artificial or prerecorded voice who did not provide prior express consent during the transaction that resulted in the debt owed, within the four years prior to the filing of the Complaint in this action.

The purported class period in the *Hunter* action commences on June 28, 2009.

Lastly, only one month later, Jessica Beell filed in the United States District Court for Nevada a Class Action Complaint against FNCB, entitled *Jessica Beell v. First National Collection Bureau, Inc.*, Case No. 13-cv-01303-KJD-CWH (the "*Beell* action"). The Complaint filed in the *Beell* action contains nearly indistinguishable allegations about FNCB's purported violation of the TCPA, and also contains the following nearly identical class definition:

All individuals in the United States who (1) received a telephone call; (2) made by or on behalf of Defendant First National Collection Bureau, Inc.; (3) on a cellular telephone number; (4) that the call recipient did not provide directly to Defendant or a third party lender, creditor, or retailer at the time he or she allegedly incurred the debt underlying the telephone call.

The Beell purported class period runs from July 23, 2009.

The three cases are in a similar procedural posture, with answers having been filed by FNCB and no pending class certification motions. Discovery has not been commenced in either the *Hunter* action or the *Beell* action, and remains in its infancy in the *Neal* action.³

III. Argument

In evaluating a motion for transfer and consolidation, the Panel considers whether the actions sought to be consolidated involve common questions of fact, whether consolidation will promote a just and efficient resolution of the parties' disputes, and whether transfer and consolidation will best serve the convenience of the parties and witnesses. (28 U.S.C. § 1407; *In re Desloratadine Patent Litig.* (J.P.M.L. 2007) 502 F. Supp. 2d 1354, 1355.) Each of the three factors is met by the consolidation and transfer sought by this Motion.

A. The three related class actions involve common questions of law and fact

First, each of the three related class actions involves claims against FNCB alleging it violated the TCPA through its purported use of an automatic telephone dialing system and an artificial or prerecorded voice to place unsolicited debt collection calls to the cellular phones of the named plaintiffs and the class members without their consent. Thus, each of the three actions will entail the following legal and factual issues best addressed in a consolidated action:

- An evaluation of the means and methods FNCB obtains the debtors' contact information in connection with the defense of consent;
- FNCB's policies regarding consent to place calls to debtors' mobile phones; and
- FNCB's collection call system, equipment, servers and databases employed

³ There is a fourth class action lawsuit against FNCB that also alleges violations of the TCPA, in addition to other non-TCPA claims. That action, which is pending in the Southern District of Ohio, is entitled *Dennis Brown, et al. v. First National Collection Bureau, Inc.*, and assigned Case No. 1:13-cv-00524. Due to the inclusion of other non-TCPA claims and the procedural posture of that case, FNCB believes it is not appropriate for consolidation with the other three cases, and is not seeking to consolidate that action at this time.

during the pertinent four year class period and whether it violates the TCPA. Thus, with only a single defendant's practices for the same 4 year class period under scrutiny, the three class actions are appropriate for Section 1407 transfer and consolidation.

B. Transfer and consolidation will promote judicial efficiency and further the convenience of the parties and witnesses

Second, transfer and consolidation will promote the just and efficient conduct of the actions as only one court will be required to manage discovery, consider and rule upon a motion for class certification, and conduct other pretrial proceedings, all the while familiarizing itself with the factual predicate, including FNCB's technology and call systems. Consolidation will also prevent inconsistent rulings on critical issues such as whether FNCB's call system violates the TCPA and whether the cases are appropriate for class treatment. (See *In re Desloratadine Patent Litig.*, *supra*, 502 F. Supp. 2d at 1355.)

Third, transfer and consolidation will be most convenient to the parties and witnesses as they will only have to conduct discovery, or appear for deposition, in one forum on a unified schedule, while avoiding duplicative discovery and proceedings. (*In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, (J.P.M.L. 2001) 149 F. Supp. 2d 931, 933 [explaining that centralization would effectuate "an overall savings of cost and a minimum of inconvenience to all concerned"]; *In re Vioxx Prod. Liab. Litig.* (J.P.M.L. 2005) 360 F.Supp.1352, 1354 [pointing out that "transfer under Section 1407 has the salutary effect of placing all the actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues ...and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties."].) The potential of

duplication is particularly true here given the nationwide scope of the class members and virtually identical class period in each of the three class actions.

C. The Southern District of California is the most appropriate venue for the consolidation of the three related class actions

The Southern District of California is the most appropriate forum for the consolidation of the three class actions based on its centrality, resources, and judicial expertise to handle the three related class actions. Southern District of California Court Judge Janis Sammartino is currently presiding over the *Hunter* action and is familiar with class actions, including those involving the TCPA. Plus, the Southern District of California is the natural mid-point location of the three district courts and easily accessible by the parties and counsel. Indeed, Plaintiffs' counsel in the *Neal* and *Hunter* actions have offices conveniently close to the Southern District of California court. And counsel for FNCB has offices in Southern California making the Southern District of California venue easily accessible. These geographic and efficiency benefits in support of the Southern District of California venue outweigh any potential inconvenience to Las Vegas-based counsel in the *Beell* action which can be alleviated by the ability to appear telephonically when needed.⁴

IV. Conclusion

Consolidation of the three class actions in the Southern District of California is warranted because each case involves TCPA violation claims against FNCB with nearly identical questions of fact and law and overlapping classes and class periods. The requested Southern District of California venue, home to the *Hunter* case, offers centrality, accessibility, judicial management, and expertise. Accordingly, FNCB respectfully requests the Panel consolidate the three class

⁴ Plaintiff Beell also is represented by the Edelson LLC firm based in Chicago, Illinois. (See Exhibit C to the accompanying Schedule of Actions for the *Beell* action docket.) Thus, the venue transfer from Las Vegas to the Southern District of California located in San Diego, California is presumed to have no impact on the Edelson firm's representation given the pre-existing geographic circumstances.

actions for all pre-trial proceedings and transfer the *Beell* and *Neal* actions to the Southern District of California.

Respectfully submitted,

GORDON & REES LLP

DATED: February 3, 2014

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BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re First National Collection Bureau, Inc. Class Action Litigation

MDL No. _____

SCHEDULE OF ACTIONS

Case Captions	Court	Civil Action No.	Judge	Corresponding Exhibits
Plaintiffs: Claudette Neal, on behalf of herself, and all others similarly situated Defendants: First National Collection Bureau, Inc. Movant: First National Collection Bureau, Inc.	USDC, Eastern District of California	2:13-cv- 01206- WBS-CKD	William B. Shubb	Exhibit A - Docket and Complaint
Plaintiffs: Nanette Hunter, on behalf of herself, and all others similarly situated Defendants: First National Collection Bureau, Inc. Movant: First National Collection Bureau, Inc.	USDC, Southern District Court of California	3:13-cv- 01515-JSL- KSC	Janis Sammartino	Exhibit B - Docket and Complaint
Plaintiffs: Jessica Beell, on behalf of herself, and all others similarly situated Defendants: First National Collection Bureau, Inc. Movant: First National Collection Bureau, Inc.	USDC of Nevada Case	2:13-cv- 01303- KJD- CWH	Kent Dawson	Exhibit C – Docket and Complaint

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re First National Collection Bureau, Inc. Class Action Litigation MDL No. _____

PROOF OF SERVICE

I hereby certify that a copy of the foregoing

**MOTION OF DEFENDANT FIRST NATIONAL COLLECTION BUREAU, INC. FOR
TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED
PRETRIAL PROCEEDINGS;**

**MEMORANDUM OF POINTS AND AUTHORITY IN SUPPORT OF DEFENDANT
FIRST NATIONAL COLLECTION BUREAU, INC.'S MOTION FOR TRANSFER AND
CONSOLIDATION OF RELATED ACTIONS PURSUANT TO 28 U.S.C. § 1407; and**

SCHEDULE OF ACTIONS

was filed in the respective courts referenced below and served by email on February 3, 2014 to all counsel in each of the following actions:

2:13-cv-01206-WBS-CKD *Neal v. First National Collection Bureau, Inc.*

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2:13-cv-01303-KJD-CWH *Beell v. First National Collection Bureau, Inc.*

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Pursuant to the Judicial Panel on Multidistrict Litigation's Panel Rules, I served a copy of the above-referenced documents via overnight mail on the following court clerks:

Clerk, U.S. District Court Southern District of California (transferor court)
221 West Broadway
San Diego, CA 92101

Clerk of the Panel
United States Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE, Room G-255, North Lobby
Washington, DC 20002-8041

☒ (Federal) I declare that I am employed in the office of the member of the bar of this Court at whose direction the service was made.

Executed on February 3, 2014 at San Francisco, California.



Maria Deang

Exhibit A

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:13-cv-01206-WBS-CKD**

Neal v. First National Collection Bureau, Inc.
Assigned to: Senior Judge William B. Shubb
Referred to: Magistrate Judge Carolyn K. Delaney
Cause: 28:1331 Fed. Question

Date Filed: 06/17/2013
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/17/2013	1	COMPLAINT against First National Collection Bureau, Inc. by Claudette Neal. Attorney Friedman, Todd M. added. (Attachments: # 1 Civil Cover Sheet)(Friedman, Todd) (Entered: 06/17/2013)
06/18/2013		RECEIPT number #CAE200053274 \$400.00 fbo Claudette Neal by Lee P. Mankin on 6/18/2013. (Kaminski, H) (Entered: 06/18/2013)
06/18/2013	3	SUMMONS ISSUED as to *First National Collection Bureau, Inc.* with answer to complaint due within *21* days. Attorney *Todd M. Friedman* *Law Offices of Todd M. Friedman, P.C.* *369 South Doheny Drive, Suite 415* *Beverly Hills, CA 90211*. (Kaminski, H) (Entered: 06/18/2013)
06/18/2013	4	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 9/16/2013 at 02:00 PM in Courtroom 5 (WBS) before Senior Judge William B. Shubb. (Attachments: # 1 Consent Form, # 2 VDRP) (Kaminski, H) (Entered: 06/18/2013)
06/27/2013	5	CONSENT to JURISDICTION of US MAGISTRATE JUDGE by Claudette Neal. (Friedman, Todd) (Entered: 06/27/2013)
07/08/2013	6	SUMMONS RETURNED EXECUTED: First National Collection Bureau, Inc. served on 6/27/2013. (Friedman, Todd) Modified on 7/9/2013 (Mena-Sanchez, L). (Entered: 07/08/2013)
07/09/2013	7	STIPULATION to Extend Time to Respond to Complaint by First National Collection Bureau, Inc., Claudette Neal. Attorney Moe, Issa Kalani added. (Moe, Issa) (Entered: 07/09/2013)
07/24/2013	8	NOTICE of APPEARANCE by Seyed Abbas Kazerounian on behalf of Claudette Neal. Attorney Kazerounian, Seyed Abbas added. (Attachments: # 1 Proof of Service) (Kazerounian, Seyed) (Entered: 07/24/2013)
07/24/2013	9	NOTICE of APPEARANCE by Joshua Branden Swigart on behalf of Claudette Neal. Attorney Swigart, Joshua Branden added. (Attachments: # 1 Proof of Service)(Swigart, Joshua) (Entered: 07/24/2013)

07/29/2013	10	SUMMONS RETURNED EXECUTED: First National Collection Bureau, Inc. served on 7/8/2013, answer due 7/29/2013. (Friedman, Todd) (Entered: 07/29/2013)
08/15/2013	11	ANSWER by First National Collection Bureau, Inc..(Moe, Issa) (Entered: 08/15/2013)
08/15/2013	12	STATEMENT of Corporate Disclosure by Defendant First National Collection Bureau, Inc.. (Moe, Issa) (Entered: 08/15/2013)
08/29/2013	13	JOINT STATUS REPORT by Claudette Neal. (Friedman, Todd) (Entered: 08/29/2013)
09/13/2013	14	STATUS (PRETRIAL SCHEDULING) ORDER signed by Senior Judge William B. Shubb on 9/12/16. The parties shall serve the initial disclosures by no later than 10/30/13. The parties shall disclose experts and produce reports by no 2/28/14. All Discovery shall be completed 8/29/2014., All Dispositive Motions shall be filed by 9/26/2014. The Final Pretrial Conference is SET for 11/10/2014 at 02:00 PM in Courtroom 5 (WBS) before Senior Judge William B. Shubb. Jury Trial is SET for 2/3/2015 at 09:00 AM in Courtroom 5 (WBS) before Senior Judge William B. Shubb.(Mena-Sanchez, L) (Entered: 09/13/2013)
09/19/2013	15	NOTICE of APPEARANCE by Matthew M. Loker on behalf of Claudette Neal. Attorney Loker, Matthew M. added. (Attachments: # 1 Proof of Service)(Loker, Matthew) (Entered: 09/19/2013)
10/01/2013	16	NOTICE of APPEARANCE by Christopher David Holt on behalf of First National Collection Bureau, Inc.. Attorney Holt, Christopher David added. (Attachments: # 1 Proof of Service Certificate of Service)(Holt, Christopher) (Entered: 10/01/2013)
11/13/2013	17	SUBSTITUTION of ATTORNEY - PROPOSED, submitted by First National Collection Bureau, Inc.. (Attachments: # 1 Proof of Service)(Holt, Christopher) (Entered: 11/13/2013)
01/24/2014	18	ORDER SUBSTITUTING ATTORNEY signed by Senior Judge William B. Shubb on 1/24/2014 Attorney Gary J. Lorch, and Amy Maclear for First National Collection Bureau, Inc., attorney Christopher David Holt terminated. (Reader, L) (Entered: 01/24/2014)
01/27/2014	19	STIPULATION and PROPOSED ORDER for Protective Order for Litigation Involving Highly Sensitive Confidential Information by First National Collection Bureau, Inc.. (Maclear, Amy) (Entered: 01/27/2014)
01/29/2014	20	STIPULATED PROTECTIVE ORDER signed by Magistrate Judge Carolyn K. Delaney on 1/29/2014 re: Highly Sensitive Confidential Information. (Donati, J) (Entered: 01/29/2014)

PACER Service Center

Transaction Receipt

02/03/2014 11:24:23

PACER Login:	gr0084	Client Code:	mgt-8010110
Description:	Docket Report	Search Criteria:	2:13-cv-01206-WBS-CKD
Billable Pages:	3	Cost:	0.30

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CLAUDETTE NEAL, on behalf of herself and) Case No.
all others similarly situated,)

Plaintiff,)

vs.)

FIRST NATIONAL COLLECTION)
BUREAU, INC.,)

Defendants.)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff Claudette Neal ("Plaintiff"), on behalf of herself and all others similarly
situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1
2 1. Plaintiff brings this action for herself and others similarly situated seeking
3 damages and any other available legal or equitable remedies resulting from the illegal actions
4 of First National Collection Bureau, Inc. ("Defendant"), in negligently, knowingly, and/or
5 willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone
6 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA"), thereby invading Plaintiff's
7 privacy.

JURISDICTION & VENUE

8
9 2. This Court has federal question jurisdiction because this case arises out of
10 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740
11 (2012).

12 3. Venue is proper in the United States District Court for the Southern
13 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because
14 Defendant does business within the state of California and Plaintiff resides within the Eastern
15 District of California.

PARTIES

16
17 4. Plaintiff, Claudette Neal ("Plaintiff"), is a natural person residing in Carmichael,
18 California and is a "person" as defined by 47 U.S.C. § 153 (10).

19 5. Defendant, First National Collection Bureau, Inc. ("Defendant"), is a leader in
20 consumer debt buying and recovery/collection and is a "person" as defined by 47 U.S.C. § 153
21 (10).

FACTUAL ALLEGATIONS

22
23 6. Beginning in or around November or December of 2012, Defendant contacted
24 Plaintiff on her cellular telephone ending in 9310, in an attempt to collect an alleged
25 outstanding debt owed for personal telephone/cable utility services.

26 7. Defendant placed multiple calls a day, often upwards of two (2) to three (3)
27 calls in a single day, on a virtual daily basis to Plaintiff's cellular telephone seeking to collect
28

1 the alleged debt owed. Defendant placed these calls from its telephone number (714) 495-
2 4808.

3 8. Defendant used an “automatic telephone dialing system”, as defined by 47
4 *U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the debt allegedly owed.

5 9. When Plaintiff would answer Defendant’s calls to her cellular telephone she
6 would be routinely greeted with a pre-recorded notification advising Plaintiff to continue to
7 hold on the line until one of Defendant’s representatives could be available. By way of such
8 pre-recorded greetings, Defendant utilized an “artificial or prerecorded voice” as prohibited by
9 47 *U.S.C. § 227(b)(1)(A)*.

10 10. Furthermore, Plaintiff repeatedly demanded that Defendant cease placing such
11 collection calls to her cellular telephone. Despite this, Defendant continued to call Plaintiff’s
12 cellular telephone via the “automatic telephone dialing system.”

13 11. Defendant’s calls constituted calls that were not for emergency purposes as
14 defined by 47 *U.S.C. § 227(b)(1)(A)*.

15 12. Defendant’s calls were placed to telephone number assigned to a cellular
16 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 *U.S.C. §*
17 *227(b)(1)*.

18 13. Plaintiff did not own the cellular telephone number ending in 9310 at the time
19 the alleged debt was incurred and never provided said cellular telephone number to the creditor
20 of the alleged debt. As such, Plaintiff is informed, believes and thereon alleges that Defendant
21 obtained Defendant’s cellular telephone number via “skiptracing.”

22 14. Plaintiff has never provided any personal information, including her cellular
23 telephone number, to Defendant for any purpose whatsoever. Furthermore, Plaintiff did not
24 possess her current cellular telephone number at the time in which the alleged debt was
25 incurred. Accordingly, Defendant never received Plaintiff’s “prior express consent” to receive
26 calls using an automatic telephone dialing system or an artificial or prerecorded voice on her
27 cellular telephone pursuant to 47 *U.S.C. § 227(b)(1)(A)*.

CLASS ALLEGATIONS

15. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

16. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

17. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

18. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

19. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the

1 privacy of said Plaintiff and Class members.

2 20. Common questions of fact and law exist as to all members of The Class which
3 predominate over any questions affecting only individual members of The Class. These
4 common legal and factual questions, which do not vary between Class members, and which
5 may be determined without reference to the individual circumstances of any Class members,
6 include, but are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of this Complaint,
8 Defendant made any call (other than a call made for emergency purposes
9 or made with the prior express consent of the called party) to a Class
10 member using any automatic telephone dialing system or any artificial or
11 prerecorded voice to any telephone number assigned to a cellular
12 telephone service;
- 13 b. Whether Plaintiff and the Class members were damages thereby, and the
14 extent of damages for such violation; and
- 15 c. Whether Defendant should be enjoined from engaging in such conduct in
16 the future.

17 21. As a person that received numerous calls from Defendant using an automatic
18 telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express
19 consent, Plaintiff is asserting claims that are typical of The Class.

20 22. Plaintiff will fairly and adequately protect the interests of the members of The
21 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

22 23. A class action is superior to other available methods of fair and efficient
23 adjudication of this controversy, since individual litigation of the claims of all Class members
24 is impracticable. Even if every Class member could afford individual litigation, the court
25 system could not. It would be unduly burdensome to the courts in which individual litigation
26 of numerous issues would proceed. Individualized litigation would also present the potential
27 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
28 to all parties and to the court system resulting from multiple trials of the same complex factual

1 issues. By contrast, the conduct of this action as a class action presents fewer management
2 difficulties, conserves the resources of the parties and of the court system, and protects the
3 rights of each Class member.

4 24. The prosecution of separate actions by individual Class members would create a
5 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
6 interests of the other Class members not parties to such adjudications or that would
7 substantially impair or impede the ability of such non-party Class members to protect their
8 interests.

9 25. Defendant has acted or refused to act in respects generally applicable to The
10 Class, thereby making appropriate final and injunctive relief with regard to the members of the
11 California Class as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227 et seq.**

15 26. Plaintiff repeats and incorporates by reference into this cause of action the
16 allegations set forth above at Paragraphs 1-25.

17 27. The foregoing acts and omissions of Defendant constitute numerous and
18 multiple negligent violations of the TCPA, including but not limited to each and every one of
19 the above cited provisions of 47 U.S.C. § 227 et seq.

20 28. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
21 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for
22 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

23 29. Plaintiff and the Class members are also entitled to and seek injunctive relief
24 prohibiting such conduct in the future.

25 ///

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

///

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///

///

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 17th day of June, 2013.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff

Exhibit B

U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:13-cv-01515-JLS-KSC

Hunter v. First National Collection Bureau, Inc.
Assigned to: Judge Janis L. Sammartino
Referred to: Magistrate Judge Karen S. Crawford
Cause: 28:1331 Fed. Question

Date Filed: 06/28/2013
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Nanette Hunter
on behalf of herself and all others
similarly situated

represented by **Daniel G. Shay**
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V.

Defendant

First National Collection Bureau, Inc.
a Nevada Corporation

represented by **Christopher D Holt**
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Date Filed	#	Docket Text
06/28/2013	1	COMPLAINT with Jury Demand against First National Collection Bureau, Inc. (Filing fee \$ 400 receipt number 0974-6051270.), filed by Nanette Hunter.

		The new case number is 3:13-cv-1515-JLS-KSC. Judge Janis L. Sammartino and Magistrate Judge Karen S. Crawford are assigned to the case. (Campion, Douglas)(vam) (av1). (Entered: 07/01/2013)
07/01/2013	2	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (vam) (av1). (Entered: 07/01/2013)
08/01/2013	3	ANSWER to 1 Complaint, by First National Collection Bureau, Inc..(Moe, Issa)Attorney Issa K. Moe added to party First National Collection Bureau, Inc.(pty:dft) (jao). (Entered: 08/01/2013)
08/01/2013	4	NOTICE of Party With Financial Interest by First National Collection Bureau, Inc. (Moe, Issa) (jao). (Entered: 08/01/2013)
08/01/2013	5	Corporate Disclosure Statement by First National Collection Bureau, Inc.. (Moe, Issa) (jao). (Entered: 08/01/2013)
08/29/2013	6	NOTICE AND ORDER for Early Neutral Evaluation Conference. IT IS HEREBY ORDERED that a telephonic Early Neutral Evaluation of your case will be held on October 2, 2013 at 9:30 a.m. in the Chambers of Magistrate Judge Karen S. Crawford. Signed by Magistrate Judge Karen S. Crawford on 8/28/2013.(jao)(jrd) (Entered: 08/29/2013)
09/16/2013	7	NOTICE OF APPEARANCE by First National Collection Bureau, Inc. <i>of Association of Counsel</i> (Attachments: # 1 Proof of Service)(Holt, Christopher)Attorney Christopher D Holt added to party First National Collection Bureau, Inc.(pty:dft) (jao). (Entered: 09/16/2013)
10/02/2013	8	Minute Entry for proceedings held before Magistrate Judge Karen S. Crawford: An Early Neutral Evaluation Conference was held on 10/2/2013. The case did not settle. Scheduling order to issue.(no document attached) (plh) (Entered: 10/24/2013)
10/24/2013	9	Order Following Early Neutral Evaluation Conference, Setting Rule 26 Compliance and Notice of Telephonic Case Management Conference. Early Neutral Evaluation Conference held on 10/2/2013. Telephonic Case Management Conference set for 11/22/2013 11:00 AM before Magistrate Judge Karen S. Crawford. Signed by Magistrate Judge Karen S. Crawford on 10/24/2013.(jao)(jrd) (Entered: 10/24/2013)
10/28/2013	10	NOTICE of Appearance by Daniel G. Shay on behalf of Nanette Hunter (Shay, Daniel)Attorney Daniel G. Shay added to party Nanette Hunter(pty:pla) (jao). (Entered: 10/28/2013)
11/08/2013	11	Joint MOTION to Substitute Attorney by First National Collection Bureau, Inc. (Attachments: # 1 Certificate of Service)(Borzcik, Joan) (jao). (Entered: 11/08/2013)
11/19/2013	12	ORDER Granting 11 Joint Motion to Substitute Attorney. The parties seek to substitute Gary J. Lorch and Joni M. Borzcik of Gordon & Rees LLP as counsel of record for Defendant First National Collection Bureau, Inc. in place of Christopher D. Holt of

		Klinedinst PC. Pursuant to Civil Local Rule 83.3(g)(2), the Court grants the motion. The Clerk shall update the Court's docket to reflect the substitution. Signed by Judge Janis L. Sammartino on 11/19/2013. (jao) (jrl). (Entered: 11/19/2013)
11/22/2013	14	Minute Entry for proceedings held before Magistrate Judge Karen S. Crawford: A telephonic Case Management Conference was held on 11/22/2013.(no document attached) (plh) (Entered: 12/09/2013)
11/27/2013	13	Order Following Case Management Conference; Order Setting Telephonic Status Conference. A telephonic Case Management Conference was held on 11/22/2013. Counsel are currently researching whether the cases could or should be consolidated. If so, it is expected that a motion to consolidate or transfer will be filed in one of the districts no later than 2/3/2014. A telephonic Status Conference is set for 2/14/2014 at 09:30 AM before Magistrate Judge Karen S. Crawford. Signed by Magistrate Judge Karen S. Crawford on 11/26/2013.(aef)(jrd) (Entered: 11/27/2013)

PACER Service Center			
Transaction Receipt			
02/03/2014 10:37:11			
PACER Login:	gr0084	Client Code:	mgt-8010110
Description:	Docket Report	Search Criteria:	3:13-cv-01515-JLS-KSC
Billable Pages:	3	Cost:	0.30

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Attorneys for Plaintiff, Nanette Hunter

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**NANETTE HUNTER, on behalf of herself
and all others similarly situated,**

Plaintiff,

vs.

**FIRST NATIONAL COLLECTION
BUREAU, INC., a Nevada corporation**

Defendant.

CASE NO. '13CV1515 JLS KSC

CLASS ACTION

**Complaint for Damages and Injunctive
Relief Pursuant To The Telephone
Consumer Protection Act, 47 U.S.C § 227 *et*
*seq.***

Jury Trial Demanded

INTRODUCTION

1. Nanette Hunter ("Plaintiff") brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant

1 First National Collection Bureau, Inc. ("Defendant") and its present, former, or future direct
2 and indirect parent companies, subsidiaries, affiliates, agents, and/or related entities
3 (collectively "Defendant"), in negligently, and/or willfully, contacting Plaintiff on Plaintiff's
4 cellular telephone without her prior express consent, in violation of the Telephone Consumer
5 Protection Act, 47 U.S.C. § 227 *et seq.*, ("TCPA"). Plaintiff alleges as follows upon personal
6 knowledge as to herself and her own acts and experiences, and, as to all other matters, upon
7 information and belief, including investigation conducted by her attorneys.

8 JURISDICTION AND VENUE

- 9 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a national class,
10 which will result in at least one class member belonging to a different state than that of
11 Defendant. Plaintiff seeks up to \$1,500.00 (one-thousand-five-hundred dollars) in damages
12 for each call in violation of the TCPA, which, when aggregated among a proposed class
13 numbering in the tens of thousands, or more, exceeds the \$5,000,000.00 (five-million dollars)
14 threshold for federal court jurisdiction under the Class Action Fairness Act of 2005
15 ("CAFA"). Therefore, both the elements of diversity jurisdiction and CAFA jurisdiction are
16 present.
- 17 3. Venue is proper in the United States District Court for the Southern District of California
18 pursuant to 18 U.S.C. § 1391(b)(c) and § 1441(a) because Defendant is deemed to reside in
19 any judicial district in which they are subject to personal jurisdiction at the time the action is
20 commenced, and because Defendant's contacts with this District are sufficient to subject them
21 to personal jurisdiction. Venue is also proper in this District because Plaintiff has resided in
22 this District at all times relevant to these claims such that a substantial part of the events
23 giving rise to Plaintiff's causes of action against Defendant occurred within this judicial
24 district.

25 PARTIES

- 26 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of
27 California, County of San Diego, in this judicial district. Plaintiff is, and at all times
28 mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (32).

- 1 5. Plaintiff is informed and believed, and thereon alleges, that Defendant is a debt collector, and
 2 is, and at all times mentioned herein was, a Nevada corporation whose primary corporate
 3 offices are located in McCarran, Nevada, making the Defendant a citizen of Nevada for
 4 diversity purposes. Plaintiff alleges that at all times relevant herein Defendant conducted
 5 business in the State of California and in the County of San Diego, and within this judicial
 6 district. The Defendant is, and at all times mentioned herein was, a "person," as defined by
 7 47 U.S.C. § 153 (32). Defendant attempts to collect debts by, among other means, making
 8 calls to cellular phones.

9 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**
 10 **(TCPA), 47 U.S.C. § 227**

- 11 6. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. § 227
 12 (TCPA),¹ in response to a growing number of consumer complaints regarding certain
 13 telemarketing practices.
- 14 7. The TCPA regulates, among other things, the use of automated telephone equipment, or
 15 "autodialers." Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of
 16 autodialers to make any call to a wireless number in the absence of an emergency or the prior
 17 express consent of the called party.²
- 18 8. According to findings by the Federal Communication Commission ("FCC"), the agency
 19 Congress vested with authority to issue regulations implementing the TCPA, such calls are
 20 prohibited because, as Congress found, automated or prerecorded telephone calls are a greater
 21 nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and
 22 inconvenient. The FCC also recognized that wireless customers are charged for incoming
 23 calls whether they pay in advance or after the minutes are used.³

26 ¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat.
 27 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the
 Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

28 ² 47 U.S.C. § 227(b)(1)(A)(iii).

³ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

9. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the “prior express consent” of the called party.⁴ The FCC “emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed.”⁵

FACTUAL ALLEGATIONS

10. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (32).
11. Defendant is, and at all times mentioned herein was, an entity that meets the definition of “person,” as defined by 47 U.S.C. § 153 (32).
12. At all times relevant Defendant conducted business in the State of California and in the County of San Diego, within this judicial district.
- 13.
14. Beginning no later than February, 2013 Defendant began calling Plaintiff on her cellular telephone attempting to collect a debt.
15. Plaintiff did not list a cellular phone number in or on any other documents at any time during the transaction that resulted in the debt being serviced by Defendant because Plaintiff did not have a cell phone at the time she incurred the debt, nor did she verbally provide any entity, including Defendant, with a cellular phone number at any time during the transaction that resulted in the debt owed. Plaintiff did not give Defendant prior express consent to call Plaintiff on her cellular telephone with the use of an autodialer and/or prerecorded message, pursuant to 47 U.S.C. § 227 (b)(1)(A).
16. On information and belief, Defendant may have obtained Plaintiff’s cellular telephone number from a third party, or by “trapping” such number, i.e., making a record of her cell

⁴ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (“FCC Declaratory Ruling”),* 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

⁵ *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (¶ 10).

1 phone number using caller identification technology, but did not receive that number from
2 Plaintiff.

3 17. Notwithstanding the fact Plaintiff did not provide Defendant or its assignees, if any, her
4 cellular number at any time during the transaction that resulted in the debt owed or at any later
5 date, Defendant, or its agents, have called Plaintiff on her cellular telephone via an "automatic
6 telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) and by using "an
7 artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227 (b)(1)(A). This ATDS has
8 the capacity to store or produce telephone numbers to be called, using a random or sequential
9 number generator, and to dial such numbers.

10 18. Such calls were also made by prerecorded voice messages and were made several times per
11 week. From May 4, 2013 through June 10, 2013 Defendant called Plaintiff's cell phone
12 twenty-one (21) times. On May 29, 2013 Defendant called Plaintiff five (5) times on her cell
13 phone, all in violation of the TCPA. The telephone number Defendant used to call Plaintiff
14 ends in 4808.

15 19. The telephone number Defendants and/or their agents called ends in 0714 and is assigned to a
16 cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47
17 U.S.C. § 227 (b)(1).

18 20. These telephone calls constituted calls that were not for emergency purposes as defined by 47
19 U.S.C. § 227 (b)(1)(A)(i).

20 21. These telephone calls by Defendants and/or their agents violated 47 U.S.C. § 227(b)(1).

21 22. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is
22 on Defendants to demonstrate that Plaintiff provided express consent within the meaning of
23 the statute.

24 CLASS ACTION ALLEGATIONS

25 23. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated
26 ("the Class").

27 24. Plaintiff represents, and is a member of, the Class, consisting of all persons within the United
28 States who received any telephone call from Defendant or their agents to said person's

cellular telephone through the use of any automatic telephone dialing system or with an artificial or prerecorded voice who did not provide prior express consent during the transaction that resulted in the debt owed, within the four years prior to the filing of the Complaint in this action.

25. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress.

26. Plaintiff does not know the number of members in the Class, but believes the Class members number in the tens of thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of this matter.

27. Plaintiff and members of the Class were harmed by the acts of Defendant in, but not limited to, the following ways: Defendant, either directly or through their agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using an autodialer and/or with a prerecorded voice message, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid; by having to retrieve or administer messages left by Defendant during those illegal calls; and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

28. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

29. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The disposition of the claims in a class action will provide substantial benefit to the parties and the

1 Court in avoiding a multiplicity of identical suits. The Class can be identified through
2 Defendant's records or Defendant's agents' records.

3 30. There is a well-defined community of interest in the questions of law and fact involved
4 affecting the parties to be represented. The questions of law and fact to the Class predominate
5 over questions that may affect individual Class members, including the following:

6 A. Whether, within the four years prior to the filing of this Complaint, Defendant
7 and/or their agents made any call (other than a call made for emergency purposes or made
8 with the prior express consent of the called party) to a Class member using any automatic
9 telephone dialing system or an artificial or prerecorded voice to any telephone number
10 assigned to a cellular telephone service;

11 B. Whether Defendant can meet its burden of showing they obtained prior express
12 consent (i.e., consent that is clearly and unmistakably stated), during the transaction that
13 resulted in the debt owed, to make such calls;

14 C. Whether Defendant's conduct was knowing and/or willful;

15 D. Whether Defendant is liable for damages, and the extent of statutory damages
16 for such violation; and

17 E. Whether Defendant should be enjoined from engaging in such conduct in the
18 future.

19 31. As a person that received numerous calls using an automatic telephone dialing system or an
20 artificial or prerecorded voice, without her prior express consent, Plaintiff is asserting claims
21 that are typical of the Class. Plaintiff will fairly and adequately represent and protect the
22 interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

23 32. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the
24 Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to
25 face the potential for irreparable harm. In addition, these violations of law would be allowed
26 to proceed without remedy and Defendant would undoubtedly continue such illegal conduct.
27 Because of the size of the individual Class members' claims, few Class members could afford
28 to seek legal redress for the wrongs complained of herein.

1 33. Plaintiff has retained counsel experienced in handling class action claims and claims
2 involving violations of the Telephone Consumer Protection Act.

3 34. A class action is a superior method for the fair and efficient adjudication of this controversy.
4 Class-wide damages are essential to induce Defendant to comply with federal and California
5 law. The interest of Class members in individually controlling the prosecution of separate
6 claims against Defendant is small because the maximum statutory damages in an individual
7 action for violation of privacy are minimal. Management of these claims is likely to present
8 significantly fewer difficulties than those presented in many class claims. Defendant has acted
9 on grounds generally applicable to the Class, thereby making appropriate final injunctive
10 relief and corresponding declaratory relief with respect to the Class as a whole.

11 **FIRST CAUSE OF ACTION**
12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
47 U.S.C. § 227 *ET SEQ.*

13 35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though
14 fully stated herein.

15 36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent
16 violations of the TCPA, including but not limited to each and every one of the above-cited
17 provisions of 47 U.S.C. § 227 *et seq.*

18 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the
19 Class are entitled to an award of \$500.00 in statutory damages for each and every violation,
20 pursuant to 47 U.S.C. § 227(b)(3)(B). Plaintiff and the Class are also entitled to and seek
21 injunctive relief prohibiting such conduct in the future.

22 38. Plaintiff and Class members are also entitled to an award of attorneys' fees and costs.

23 **SECOND CAUSE OF ACTION**
24 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
25 **TELEPHONE CONSUMER PROTECTION ACT**
26 **47 U.S.C. § 227 *ET SEQ.***

27 39. Plaintiff incorporates by reference the above paragraphs 1 through 34, inclusive, of this
28 Complaint as though fully stated herein.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

41. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

42. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

43. Plaintiff and Class members are also entitled to an award of attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.*

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 (five-hundred dollars) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- An award of attorneys' fees and costs to counsel for Plaintiff and the Class.
- An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the lawyers and law firms representing Plaintiff as counsel for the Class.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.*

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member treble damages, as provided by statute, up to \$1,500.00 (one-thousand-five-hundred dollars) for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- An award of attorneys' fees and costs to counsel for Plaintiff and the Class.
- An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the lawyers and law firms representing Plaintiff as counsel for the Class.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury on all counts so triable.

Date: June 28, 2013

LAW OFFICES OF DOUGLAS J. CAMPION, APC

By: /s/ Douglas J. Campion
Douglas J. Campion
Doug@DJCampion.com
409 Camino Del Rio South, Suite 303
San Diego, CA 92108
Telephone: (619) 299-2091
Facsimile: (619) 858-0034

Date: June 28, 2013

LAW OFFICES OF DANIEL G. SHAY

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San Diego, CA 92108
Telephone: (619) 222-7429
Facsimile: (866) 431-3292

Date: June 28, 2013

LAW OFFICES OF STEVEN E. KAFTAL

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Facsimile: (866) 431-3292

Attorneys for Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Nanette Hunter, on behalf or herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Law Offices of Douglas J. Campion, APC, 409 Camino Del Rio S., # 303,
San Diego, CA 92108; 616-299-2091; Law Offices of Daniel G. Shay,
409 Camino Del Rio S., # 101B, San Diego, CA 92108; 619-222-7429

DEFENDANTS

First National Collection Bureau, Inc., a Nevada corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'13CV1515 JLS KSC**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28:1331 (vam)
 47 U.S.C. Section 227 et seq. (Telephone Consumer Protection Act)

Brief description of cause:
 Calling cell phones without consent

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

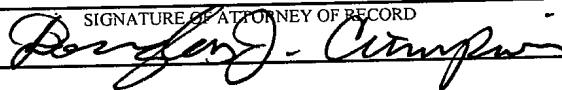
(See instructions):

JUDGE

DOCKET NUMBER

DATE
 06/28/2013

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Exhibit C

United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:13-cv-01303-KJD-CWH

Beell v. First National Collection Bureau, Inc.
Assigned to: Judge Kent J. Dawson
Referred to: Magistrate Judge Carl W. Hoffman
Cause: 28:1331 Fed Question: Fed Communications Act of 1

Date Filed: 07/23/2013
Jury Demand: Plaintiff
Nature of Suit: 450 Commerce ICC Rates,
Etc.
Jurisdiction: Federal Question

Plaintiff

Jessica Beell

represented by **Benjamin H Richman**
Edelson P.C.
350 North LaSalle Street
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312-589-6370
Fax: 312-589-6378
Email: brichman@edelson.com
ATTORNEY TO BE NOTICED

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312-589-6370
Email: cdore@edelson.com
ATTORNEY TO BE NOTICED

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Fax: (702) 737-7712
Email: cnklawfirm@aol.com
ATTORNEY TO BE NOTICED

V.

Defendant

First National Collection Bureau, Inc.

represented by **Gary J. Lorch**

Gordon & Rees LLP
633 W Fifth St 52nd Fl
Los Angeles, CA 90071
213-576-5000
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Stephanie J Smith

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rex Garner

Morris Law Group
900 Bank Of America Plaza
300 S. Fourth Street
Las Vegas, NV 89101-
Email: rdg@morrislawgroup.com
TERMINATED: 11/12/2013

Robert R. McCoy

Morris Law Group
900 Bank Of America Plaza
300 S. Fourth Street
Las Vegas, NV 89101-
702-474-9400
Fax: 702-474-9422
Email: rrm@morrislawgroup.com
TERMINATED: 11/12/2013

Date Filed	#	Docket Text
07/23/2013	1	COMPLAINT - <i>CLASS ACTION</i> against First National Collection Bureau, Inc. (Filing fee \$400 receipt number 0978-2898070), filed by Jessica Beell. Certificate of Interested Parties due by 8/2/2013. Proof of service due by 11/20/2013. (Cook, Marc) (Entered: 07/23/2013)
07/23/2013		Case assigned to Judge Kent J. Dawson and Magistrate Judge Carl W. Hoffman. (ASB) (Entered: 07/23/2013)
07/23/2013	2	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. A copy of form AO 85 has been mailed to parties not receiving electronic service. (no image attached) (ASB) (Entered: 07/23/2013)
08/01/2013	3	CERTIFICATE of Interested Parties filed by Jessica Beell that identifies all parties that have an interest in the outcome of this case. <i>Certificate of Interested Parties</i> . (Cook, Marc) (Entered: 08/01/2013)
09/03/2013	4	WAIVER OF SERVICE Returned Executed by Jessica Beell. First National Collection Bureau, Inc. waiver sent on 7/25/2013, answer due 9/23/2013. (Cook, Marc) (Entered: 09/03/2013)
09/18/2013	5	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Christopher L. Dore and DESIGNATION of Local Counsel Marc P. Cook (Filing fee \$ 200 receipt number 0978-2965440) filed by Plaintiff Jessica Beell. Motion ripe 9/18/2013. (Cook, Marc) <u>Modified to add link to corrected image 11 on 9/30/2013.</u> (MAJ) (Entered: 09/18/2013)
09/18/2013	6	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Benjamin H. Richman and DESIGNATION of Local Counsel Marc P. Cook (Filing fee \$ 200 receipt number 0978-2965462) filed by Plaintiff Jessica Beell. Motion ripe 9/18/2013. (Cook, Marc) <u>Modified to add link to corrected image 10 on 9/30/2013.</u> (MAJ) (Entered: 09/18/2013)
09/18/2013	7	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Rafey S. Balabanian and DESIGNATION of Local Counsel Marc P. Cook (Filing fee \$ 200 receipt number 0978-2965695) filed by Plaintiff Jessica Beell <i>Verified Petition for Permission to Practice in This Case Only by Attorney Not Admitted to the Bar of This Court and Designation of Local Counsel for Rafey S. Balabanian</i> . Motion ripe 9/18/2013. (Cook, Marc) <u>Modified to add link to corrected image 12 on 9/30/2013.</u> (MAJ) (Entered: 09/18/2013)
09/23/2013	8	ANSWER to 1 Complaint, filed by First National Collection Bureau, Inc.. Certificate of

		Interested Parties due by 10/3/2013. Discovery Plan/Scheduling Order due by 11/7/2013.(Garner, Rex) (Entered: 09/23/2013)
09/23/2013	9	CERTIFICATE of Interested Parties filed by First National Collection Bureau, Inc.. There are no known interested parties other than those participating in the case . (Garner, Rex) (Entered: 09/23/2013)
09/30/2013	10	NOTICE of Corrected Image/Document re 6 VERIFIED PETITION for Permission to Practice Pro Hac Vice and DESIGNATION of Local Counsel by Plaintiff Jessica Beell. (Service of corrected image is attached). (Cook, Marc) (Entered: 09/30/2013)
09/30/2013	11	NOTICE of Corrected Image/Document re 5 VERIFIED PETITION for Permission to Practice Pro Hac Vice and DESIGNATION of Local Counsel by Plaintiff Jessica Beell. (Service of corrected image is attached). (Cook, Marc) (Entered: 09/30/2013)
09/30/2013	12	NOTICE of Corrected Image/Document re 7 VERIFIED PETITION for Permission to Practice Pro Hac Vice by Rafey S. Balabanian and DESIGNATION of Local Counsel Marc P. Cook (Filing fee \$ 200 receipt number 0978-2965695) filed by Plaintiff Jessica Beell <i>Verified Petition for Permission t by Plaintiff Jessica Beell. (Service of corrected image is attached). (Cook, Marc) (Entered: 09/30/2013)</i>
10/16/2013	13	ORDER Granting 6 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Benjamin H. Richman and approving Attorney Marc P. Cook as Designation of Local Counsel for Plaintiff Jessica Beell. Signed by Judge Kent J. Dawson on 10/16/2013. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - SLD) (Entered: 10/16/2013)
10/16/2013	14	ORDER Granting 5 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Christopher L. Dore and approving Attorney Marc P. Cook as Designation of Local Counsel for Plaintiff Jessica Beell. Signed by Judge Kent J. Dawson on 10/16/2013. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - SLD) (Entered: 10/16/2013)
10/16/2013	15	ORDER Granting 7 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Rafey S. Balabanian and approving Attorney Marc P. Cook as Designation of Local Counsel for Plaintiff Jessica Beell. Signed by Judge Kent J. Dawson on 10/16/2013. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - SLD) (Entered: 10/16/2013)
11/08/2013	16	MOTION to Substitute Attorney by Defendant First National Collection Bureau, Inc.. (Smith, Stephanie) <u>Wrong event selected, modified on 11/8/2013.</u> (MAJ) (Entered: 11/08/2013)

11/12/2013	17	ORDER Granting 16 Motion to Substitute Attorney Stephanie J. Smith in place and stead of Attorneys Rex Garner and Robert R. McCoy for First National Collections Bureau, Inc. Signed by Magistrate Judge Carl W. Hoffman on 11/12/13. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 11/13/2013)
11/18/2013	18	(1st Notice) NOTICE: of Non-Compliance with Special Order 109: that Benjamin H. Richman is in violation of Special Order 109. Participation in the electronic filing system became mandatory for all attorneys effective January 1, 2006. <i>You are required to register for the Courts Case Management and Electronic Case Filing (CM/ECF) program and the electronic service of pleadings.</i> Please visit the Courts website at www.nvd.uscourts.gov , then select ATTORNEY REGISTRATION located in the middle of the web page to register. (no image attached) (RFJ) (Entered: 11/18/2013)
12/06/2013	19	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Gary J. Lorch and DESIGNATION of Local Counsel Stephanie J. Smith (Filing fee \$ 200 receipt number 0978-3057591) by Defendant First National Collection Bureau, Inc.. Motion ripe 12/6/2013. (AF) (Entered: 12/09/2013)
12/20/2013	20	ORDER Granting 19 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Gary J. Lorch and approving Designation of Local Counsel Stephanie J. Smith for First National Collection Bureau, Inc.. Signed by Judge Kent J. Dawson on 12/17/13. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/20/2013)

PACER Service Center			
Transaction Receipt			
02/03/2014 10:39:27			
PACER Login:	gr0084	Client Code:	mgt-8010110
Description:	Docket Report	Search Criteria:	2:13-cv-01303-KJD-CWH
Billable Pages:	4	Cost:	0.40

MARC P. COOK

BAILUS COOK & KELESIS, LTD.
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Facsimile: (702) 737-7712
Email: cnklawfirm@aol.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JESSICA BEELL, individually on her
own behalf and on behalf of all others similarly
situated,

Plaintiff,

v.

FIRST NATIONAL COLLECTION
BUREAU, INC., a Nevada corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff Jessica Beell brings this class action complaint against Defendant First National Collection Bureau, Inc., to stop Defendant's practice of making unsolicited phone calls to the cellular telephones of consumers nationwide, and to obtain redress for all persons injured by its conduct. Plaintiff, for her class action complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE ACTION

1. Defendant First National Collection Bureau, Inc. is debt collector working in conjunction with such retailers as Verizon.

2. In its collection efforts, Defendant engages in unlawful and unfair debt collection practices, including harassing borrowers with telephone calls at all hours of the day.

3. Defendant repeatedly made unsolicited telephone calls to Plaintiff's and the other putative Class member's cellular telephones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

4. Neither Plaintiff Beell, nor the other members of the proposed Class, ever provided the cellular telephone numbers on which they received calls to Defendant for any purpose, nor did they consent to have Defendant make telephone calls to those telephone numbers.

5. By making the telephone calls at issue in this Complaint, Defendant caused Plaintiff and the members of the Class actual harm, including the aggravation and nuisance that necessarily accompanies the receipt of unsolicited and harassing telephone calls, and the monies paid to their wireless carriers for the receipt of such telephone calls.

6. The TCPA was enacted to protect consumers from unsolicited phone calls exactly like those alleged in this case. Defendant made these calls despite the fact that neither Plaintiff Beell, nor the other members of the putative Class, ever provided their cellular telephone numbers to Defendant or any other entity for any purpose related to a debt, and never provided Defendant consent to be called on their cellular telephones.

7. In response to Defendant's unlawful conduct, Plaintiff filed the instant lawsuit and seeks an injunction requiring Defendant to cease all unsolicited telephone calling activities and an award of statutory damages to the members of the Class under the TCPA, together with costs and reasonable attorneys' fees.

PARTIES

8. Plaintiff Jessica Beell is a natural person and citizen of the State of Washington.

9. Defendant First National Collection Bureau, Inc. is a corporation organized and existing under the laws of the State of Nevada with its principal place of business located at 3631

1 10. Warren Way, Reno, Nevada 89509. First National Collection Bureau does business
2 throughout the United States and in this District.

3 **JURISDICTION AND VENUE**

4 11. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331,
5 as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, which is
6 a federal statute.

7 12. The Court has personal jurisdiction over Defendant and venue is proper in this
8 District because Defendant is incorporated under the laws of the State of Nevada and its principal
9 place of business is located in this District.

10 **COMMON FACTUAL ALLEGATIONS**

11 13. Defendant placed and continues to place repeated and harassing phone calls to
12 consumers who allegedly owe a debt held by Defendant, or held by a third party on whose behalf
13 Defendant is acting, and who never provided the number called to Defendant or the third party.
14 Instead, Defendant acquires phone numbers through various means such as “skip tracing” or
15 “number trapping.”

16 14. Defendant has placed calls for the purpose of debt collection to thousands of
17 consumers in the past four years.

18 15. In or around 2002, Plaintiff purchased a cellular telephone from Verizon. The
19 cellular telephone did not work properly and, within one month of her purchase, Plaintiff returned
20 the phone and did not purchase another.

21 16. In or around 2012, a debt of \$1,026 appeared on Plaintiff’s credit report from
22 Verizon. This debt incorrectly stems from Plaintiff’s 2002 Verizon purchase. Plaintiff does not owe
23 any money to Verizon associated with her purchase of a cellular telephone.

24 17. Approximately three months after Plaintiff noticed the debt on her credit report, the
25 debt became associated with Pinnacle Credit Services, instead of Verizon.

18. Thereafter, in or around November 2012, Plaintiff received at least five calls from Defendant on her cellular telephone for the purpose of trying to collect the alleged debt.

19. Plaintiff never provided her telephone number to Defendant or Verizon (nor non-party Pinnacle Credit Services), never consented to receive telephone calls from Defendant or Verizon at that number, did not provide that telephone number at the time she purchased a phone from Verizon, and did not provide that telephone number to Defendant, Pinnacle Credit Services, or Verizon in any other capacity at the time Plaintiff received the phone and allegedly incurred the debt.

20. The calls Plaintiff received were made using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers. Additionally, Defendant's calls utilized interactive voice recognition technology, also known as a predictive dialer, wherein a machine places calls, and when a consumer answers the phone there is a noticeable pause prior to being connected to a live representative of Defendant. This technology dials several numbers simultaneously and connects the call to only those who answer first.

21. Defendant was and is aware that the above described telephone calls were and are being made to consumers without those consumers' prior express consent.

CLASS ALLEGATIONS

22. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of herself and a class (the “Class”) defined as follows:

All individuals in the United States who (1) received a telephone call; (2) made by or on behalf of Defendant First National Collection Bureau, Inc.; (3) on a cellular telephone number; (4) that the call recipient did not provide directly to Defendant or a third party lender, creditor, or retailer at the time he or she allegedly incurred the debt underlying the telephone call.

23. **Numerosity:** The exact number of Class members is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant has made telephone calls to tens of thousands of consumers who fall into the

1 definition of the Class. Class members can be identified through Defendant's records.

2 24. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class,
3 in that Plaintiff and the Class members sustained damages arising out of Defendant's uniform
4 wrongful conduct and unsolicited telephone calls.

5 25. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect
6 the interests of the Class, and has retained counsel competent and experienced in complex class
7 actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses
8 unique to Plaintiff.

9 26. **Commonality and Predominance:** There are many questions of law and fact
10 common to the claims of Plaintiff and the Class, and those questions predominate over any
11 questions that may affect individual members of the Class. Common questions for the Class
12 include, but are not necessarily limited to the following:

- 13 (a) whether Defendant's conduct constitutes a violation of the TCPA;
- 14 (b) whether the equipment Defendant used to make the telephone calls in
15 question was an automatic telephone dialing system as contemplated by the
16 TCPA;
- 17 (c) whether Defendant systematically made telephone calls to persons who did
18 not previously provide Defendant with their prior express consent to receive
19 such telephone calls;
- 20 (d) whether Class members are entitled to treble damages based on the
21 willfulness of Defendant's conduct.

22 27. **Superiority:** This case is also appropriate for class certification because class
23 proceedings are superior to all other available methods for the fair and efficient adjudication of this
24 controversy since joinder of all parties is impracticable. The damages suffered by the individual
25 members of the Class will likely be relatively small, especially given the burden and expense of
26 individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would
27
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1 be virtually impossible for the individual members of the Class to obtain effective relief from
2 Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it
3 would still not be preferable to a class action, because individual litigation would increase the delay
4 and expense to all parties due to the complex legal and factual controversies presented in this
5 Complaint. By contrast, a class action presents far fewer management difficulties and provides the
6 benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court.
7 Economies of time, effort and expense will be fostered and uniformity of decisions ensured.

8 **COUNT I**
9 **Violation of the TCPA, 47 U.S.C. § 227**
10 **(On behalf of Plaintiff and the Class)**

11 28. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
12 herein.

13 29. Defendant made unsolicited telephone calls to cellular telephone numbers belonging
14 to Plaintiff and the other members of the Class without their prior express consent to receive such
15 calls.

16 30. Defendant made the telephone calls, or had them made on its behalf, using
17 equipment that had the capacity to store or produce telephone numbers to be called using a random
18 or sequential number generator, and to dial such numbers.

19 31. Defendant and its agents utilized equipment that made, or had made on its behalf, the
20 telephone calls to Plaintiff and other members of the Class simultaneously and without human
21 intervention.

22 32. By making, or having made on its behalf, the unsolicited telephone calls to Plaintiff
23 and the Class's cellular telephones without prior express consent, and by utilizing an automatic
24 telephone dialing system, Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii).

25 33. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Class
26 suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on
27 their cellular phones and under section 227(b)(3)(B) are each entitled to, *inter alia*, a minimum of
28

1 \$500 in damages for each such violation of the TCPA.

2 34. Should the Court determine that Defendant's conduct was willful and knowing, the
3 Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by
4 Plaintiff and the other members of the Class.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Jessica Beell, individually and on behalf of the Class, prays for the
7 following relief:

- 8 1. An order certifying the Class as defined above, appointing Plaintiff Jessica Beell as
9 the representative of the Class, and appointing her counsel as Class Counsel;
- 10 2. An award of actual and statutory damages;
- 11 3. An injunction requiring Defendant to cease all unsolicited telephone calling
12 activities, and otherwise protecting the interests of the Class;
- 13 4. An award of reasonable attorneys' fees and costs; and
- 14 5. Such other and further relief that the Court deems reasonable and just.

15 **JURY DEMAND**

16 Plaintiff requests a trial by jury of all claims that can be so tried.

17 Respectfully submitted,

18 Dated: July 23, 13

19 **JESSICA BEELL**, individually and on
behalf of all others similarly situated,

20 By: /s/ Marc P. Cook
21 One of her Attorneys

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